

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alex Starace	Team: Team # 8	CCRB Case #: 200909090	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 06/06/2009 12:30 AM	Location of Incident: 430 St. Nicholas Avenue	Precinct: 32	18 Mo. SOL 12/6/2010	EO SOL 12/6/2010	
Date/Time CV Reported Sat, 06/06/2009 1:19 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 06/11/2009 2:17 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Aaron Thorn	17386	907442	032 PCT
2. An officer			032 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Heribert Cruz	26261	945625	032 PCT
2. SGT Daniel Miller	02549	919418	032 PCT
3. SGT Ray Thorney	03841	926206	032 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Aaron Thorn	Abuse: PO Aaron Thorn questioned § 87(2)(b)	
B.POM Aaron Thorn	Abuse: PO Aaron Thorn frisked § 87(2)(b)	
C.POM Aaron Thorn	Abuse: PO Aaron Thorn searched § 87(2)(b)	
D. An officer	Force: An officer used physical force against § 87(2)(b)	

Case Summary

On June 9, 2009, § 87(2)(b) called IAB to file a complaint on behalf of her son, § 87(2)(b). § 87(2)(b) complaint was forwarded to the CCRB on June 11, 2009.

On June 6, 2009, at approximately 12:30 am, in the vicinity of 430 St. Nicholas Avenue, § 87(2)(b) was arrested for § 87(2)(b). The following allegations stemmed from the incident:

- **Allegation A -- PO Thorn questioned** § 87(2)(b) § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
- **Allegation B -- PO Thorn frisked** § 87(2)(b) § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
- **Allegation C -- PO Thorn searched** § 87(2)(b) § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
- **Allegation D -- An officer used physical force against** § 87(2)(b) § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)

Results of Investigation

Civilian Statement(s)

Victim: § 87(2)(b)
§ 87(2)(b) is a § 87(2)(b)-old black male with brown eyes and brown hair. He is 6'1" tall and weighs 165 pounds.

CCRB Testimony (encl. 8A-J)

On June 6, 2009, at approximately 12:30 AM, § 87(2)(b) was descending some stairs that spanned a park between 130th Street and St. Nicholas Avenue. He noticed two individuals (whom he later found out were plainclothes officers) looking at some grass in the park, near the bottom of the staircase. § 87(2)(b) said, "How are you doing?" to the officers as he walked past and continued walking down the stairs and along St. Nicholas Avenue. PO1 (identified as PO Aaron Thorn) said to § 87(2)(b) "Come here." (Allegation A) § 87(2)(b) stopped and turned, but did not approach. PO Thorn started to approach § 87(2)(b). § 87(2)(b) took a step backwards because he was afraid. PO Thorn took out his badge, which had been hanging by a lanyard under PO Thorn's shirt, and showed it to § 87(2)(b). § 87(2)(b) said, "What's up?" PO2 (identified as Sgt. Miller) also approached.

PO Thorn asked § 87(2)(b) what he had been doing. § 87(2)(b) stated that he had just left his house. PO Thorn asked § 87(2)(b) what had happened "up there," referring to where § 87(2)(b) had just been, since § 87(2)(b) had just descended some stairs. § 87(2)(b) didn't know what happened and told PO Thorn this. PO Thorn asked again what had happened. § 87(2)(b) told PO Thorn he didn't know what he was talking about. During this interaction, § 87(2)(b) described his demeanor as calm and stated that he held his hands at his side, half a foot away from his body with his palms outwards, so that the officers would not give him any trouble. § 87(2)(b) described PO Thorn's demeanor as equally calm. PO Thorn said,

“Something happened,” and then asked for § 87(2)(b) address. § 87(2)(b) gave PO Thorn his grandmother’s address. PO Thorn asked § 87(2)(b) if he was sure “nothing had happened,” and § 87(2)(b) said he was. § 87(2)(b) then asked, “What are you really stopping me for?”

PO Thorn started to frisk § 87(2)(b) (**Allegation B**) PO Thorn patted down the front and side pockets of § 87(2)(b) raincoat. PO Thorn then patted down a pocket on § 87(2)(b) left bicep. The pocket had a zipper, so PO Thorn unzipped the pocket and took out § 87(2)(b) i-Pod. (**Allegation C**) PO Thorn also frisked the pass-through pocket on the front of § 87(2)(b) raincoat and shook it so that a juice box fell out. PO Thorn lifted § 87(2)(b) shirt and coat so that his belt and waist were revealed and then patted down the exterior of § 87(2)(b) pants around the thigh and waist. PO Thorn then patted down § 87(2)(b) rear pants pockets and searched each of § 87(2)(b) rear pants pockets.

PO Thorn found a switch blade in one of § 87(2)(b) rear back pockets. The knife was a switch-blade knife with a blade of about 2 inches. The knife before it was unfolded was a little smaller than a pen in height and a little wider than a pen. The knife was silver with a black rubber handle. PO Thorn handed the knife to Sgt. Miller. The officers kept telling § 87(2)(b) that he fit the description of a perpetrator. § 87(2)(b) asked PO Thorn for the description of the individual they were searching for; PO Thorn shined his flashlight on § 87(2)(b) and said that it was for a person wearing a gray hoodie. § 87(2)(b) claimed he was wearing a sky-blue raincoat with a hood and sky-blue sneakers. When § 87(2)(b) was led over to an unmarked Black Crown Victoria on St. Nicholas Avenue and put in the back seat, he heard the officers tell the dispatcher over the radio that he was not a person who matched the description.

When § 87(2)(b) was taken to the 32nd Precinct Station House, while his property was being vouchered, PO3 said something about § 87(2)(b) not trusting officers. PO3 was angry, so he grabbed the back of § 87(2)(b) collar from across the front desk and yanked § 87(2)(b) through a gate that was adjacent to the front desk. (**Allegation D**) § 87(2)(b) fell down. PO3 then pulled § 87(2)(b) back to a standing position by using § 87(2)(b) collar. § 87(2)(b) tried to turn to look at the badge number of PO3. PO3 stated: “Don’t look at me!” and “chopped” § 87(2)(b) neck. § 87(2)(b) described this “chopping” action as PO3 trying to choke the front of § 87(2)(b) neck by grasping it quickly with one hand, but because PO3 was so much shorter than § 87(2)(b) PO3 didn’t get a good grip and instead knocked § 87(2)(b) against an adjacent wall that was several feet away.

PO3 then pushed § 87(2)(b) against a nearby wall, face first, using § 87(2)(b) collar. PO3 pinned § 87(2)(b) against the wall by placing his knee into the back of § 87(2)(b) legs. § 87(2)(b) tried to turn his head to see what was going on. PO3 then punched § 87(2)(b) above his left eye three times, causing the area above § 87(2)(b) right eye to hit a fuse box three times. Each time, PO3 said, “Don’t look at me!” After § 87(2)(b) was punched three times, § 87(2)(b) stopped trying to turn his head to look at PO3. § 87(2)(b) sustained swelling and slight bleeding above his right eye. § 87(2)(b) was still handcuffed during this incident.

Once § 87(2)(b) stopped turning his head and PO3 stopped punching him, PO3 then pulled down on the chain connecting § 87(2)(b) handcuffs and continued doing so. § 87(2)(b) asked PO3 how much longer he was going to pull down on chain connecting his handcuffs. PO3 stated that § 87(2)(b) “kept flexing,” though had not been trying to move his hands and was

consciously not flexing his arm muscles. PO3 kept pulling on § 87(2)(b) handcuffs for five or six minutes. Eventually, PO3 relented and § 87(2)(b) was placed in a cell. § 87(2)(b) eventually touched the area above his eye and realized it was sticky. He concluded that he must have been bleeding. § 87(2)(b) did not receive medical treatment.

Civilians Not Interviewed

§ 87(2)(b) was not interviewed for this investigation because she did not witness any of the allegations.

NYPD Statement(s):

Subject Officer: PO Aaron Thorn

- *PO Thorn is a § 87(2)(b)-old black male. He has a shaved head and brown eyes. He is 6'2" tall and weighs 220 pounds.*
- *PO Thorn worked from 5:30 PM on June 5th until 2:05 AM on June 6th, 2009. He was working with Sgt. Daniel Miller. PO Thorn was in plainclothes and was assigned to an unmarked black Crown Victoria, vehicle number 189.*

Complaint Report § 87(2)(b), **Arrest Report** #§ 87(2)(b) (encl. 15A-B, 16A-C)

§ 87(2)(a) 160.50

Memobook (encl. 10C-D)

2330: One under opp 430 St. Nich

2345: 62A in regards

CCRB Testimony (encl. 10A-D)

PO Thorn responded to a complaint alleging that a victim was robbed in St. Nicholas Park. The victim had stated that after he had been robbed, two gunshots had been fired at him. PO Thorn and Sgt. Miller went into the park and started looking around on the ground for shell cases from the alleged robbery. PO Thorn stated there was a physical description of the robbers, but he did not remember what the description was.

After five minutes of searching for shell cases, PO Thorn saw § 87(2)(b) standing on a stairway in the park, in the location where the robbery victim alleged he was robbed. PO Thorn approached § 87(2)(b). § 87(2)(b) was not doing anything other than standing on the steps. PO Thorn's suspicion was raised because § 87(2)(b) was in an area where a crime had recently been perpetrated and because it was late at night. Once PO Thorn started approaching § 87(2)(b), § 87(2)(b) started approaching PO Thorn.

PO Thorn asked § 87(2)(b) what he was doing in the park and explained to § 87(2)(b) that something had happened in the park. § 87(2)(b) verbally responded. PO Thorn did not remember what § 87(2)(b) exact words were, but stated that § 87(2)(b) response was evasive, though PO Thorn could not describe how § 87(2)(b) was being evasive. PO Thorn stated to the CCRB that his suspicions were raised by § 87(2)(b) evasive response. PO Thorn also stated to the CCRB that he didn't ask § 87(2)(b) any other questions, other than what he was doing, before he decided to frisk § 87(2)(b). Sgt. Miller did not interact with § 87(2)(b) during the stop, but was standing nearby to back up PO Thorn.

PO Thorn then patted down § 87(2)(b) by running his hands down § 87(2)(b) shoulders and jacket and around § 87(2)(b) waist area, searching for weapons. PO Thorn found a hard object in one of § 87(2)(b) pockets (PO Thorn does not recall which pocket and was not be more descriptive about what the object felt like, other than a hard object). PO Thorn pulled the object out of § 87(2)(b) pocket and found it to be a switchblade knife. Aside from the switchblade, PO Thorn did not recall feeling or removing any other objects from § 87(2)(b) person.

§ 87(2)(b) was then handcuffed and put in the unmarked car and taken to the Station House. The processing of the arrest was in no way unusual. § 87(2)(b) was pedigreed, his property was vouchered and then he was placed in a cell. PO Thorn was with § 87(2)(b) during the entire process, from when § 87(2)(b) entered the Station House until he was placed in a cell. PO Thorn did not see anyone use any physical force against § 87(2)(b) in the Station House. PO Thorn did not see any injuries on § 87(2)(b) face during the time he interacted with § 87(2)(b).

Witness Officer: SGT DANIEL MILLER

- *Sgt. Miller is a § 87(2)(b)-old white male. He has brown hair and brown eyes. He is 5'6" tall and weighs 188 pounds.*
- *Sgt. Miller worked from 5:26 PM on June 5th until 2:05 AM on June 6th, 2009. He was the Anti-Crime Supervisor for the tour. He was working with PO Aaron Thorn. Sgt. Miller was in plainclothes and was assigned to an unmarked vehicle, number 189. He did not have a memobook entry regarding the incident*

CCRB Testimony (encl. 11A-C)

An unknown individual entered the 32nd Precinct Station House and stated that he had been robbed in St. Nicholas Park and that when he was robbed, the perpetrator shot at him. Based on this information, Sgt. Miller and PO Thorn went to St. Nicholas Park to canvass for shell casings or anything else pertaining to the incident. Sgt. Miller did not recall the description of the robber in the park.

While looking for shell casings, Sgt. Miller heard some sounds, so he looked over and realized PO Thorn was interacting with § 87(2)(b). Sgt. Miller could see PO Thorn and § 87(2)(b) approaching each other, but could not hear what was being said. Sgt. Miller approached the interaction. By the time Sgt. Miller arrived, PO Thorn had already recovered a switchblade knife. Sgt. Miller stated that he did not see PO Thorn frisk § 87(2)(b). When asked by the CCRB if § 87(2)(b) may have fit the description of this robber, Sgt. Miller stated that "he seemed to fit the description, otherwise PO Thorn probably would not have stopped him."

§ 87(2)(b) was transported back to the 32nd Precinct Station House. § 87(2)(b) was calm and compliant during the process. Sgt. Miller entered the Station House with both PO Thorn and § 87(2)(b). Sgt. Miller stated that nothing unusual took place in the Station House that day. Sgt. Miller logged § 87(2)(b) into the log book and PO Thorn placed § 87(2)(b) in the holding cell.

Sgt. Miller did not see any officer grab § 87(2)(b) by the back of the neck, pin § 87(2)(b) against a wall, punch § 87(2)(b) or pull on § 87(2)(b) handcuffs with the intention of

hurting him. Sgt. Miller did not see § 87(2)(b) head hit a fuse box. Sgt. Miller did not at any point see an injury above § 87(2)(b) right eye. Sgt. Miller did not hear any officer yell at § 87(2)(b) “Don’t look at me!”

Witness Officer: SGT RAY THORNEY

- Sgt. Thorney is a § 87(2)(b)-old black male. He has black hair and brown eyes. He is 5’9” tall and weighs 200 pounds.
- Sgt. Thorney worked from 11:05 PM on June 5th until 8:02 AM on June 6th, 2009. He was the Desk Officer for the tour. Sgt. Thorney was in uniform and working without a partner.

CCRB Testimony (encl. 12A-D)

Sgt. Thorney stated that to his memory nothing unusual happened in the Station House on the day in question. However, he did not remember specifically seeing § 87(2)(b) When shown a photograph of § 87(2)(b) Sgt. Thorney stated that he did not look familiar.

Sgt. Thorney did not see any physical altercations between civilians and officers in the Station House on the evening in question. Sgt. Thorney did not see any officer grab § 87(2)(b) by the collar and pull him to the ground. Sgt. Thorney did not see an officer drag § 87(2)(b) through a gate. Sgt. Thorney did not recall an officer yelling “Don’t look at me.”

Sgt. Thorney did not see any officer attempt to choke § 87(2)(b) or punch § 87(2)(b) Sgt. Thorney did not recall seeing any officer pulling on § 87(2)(b) handcuffs in order to cause him pain. Sgt. Thorney did not see any individual’s face hit a fuse box as a result of a punch.

Medical Records

Pre-arraignment Screening Form (encl. 13A-C)

The form indicated that on June 6, 2009, at 11:32 am, § 87(2)(b) stated he was neither sick nor injured. Furthermore, the EMS worker indicated that there was no evidence of § 87(2)(b) suffering from any acute mental or medical problems.

NYPD Documents

Evidence Not Acquired

The investigation requested any record of a SPRINT being generated for a robbery having taken place in the vicinity of the incident (encl. 24V). The results were negative. The investigation also requested a UF-61 Report filled out at the 32nd Precinct Station House by an individual reporting an armed robbery (encl. 24W). This request was also negative.

Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]

Status of Civil Proceedings

- Neither § 87(2)(b) nor § 87(2)(b) has filed a Notice of Claim with the City of New York as of December 1, 2009, with regard to the incident. (encl. 22A)

Civilian(s) Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Civilian(s) CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) and by § 87(2)(b) encl. 4A-B)

Subject Officer(s) CCRB History

- PO Aaron Thorn has been a member of the service for 15 years and there are no substantiated CCRB allegations against him, § 87(4-b) § 87(2)(g) (encl. 3A-B).

Conclusion

Identification of Subject Officer(s)

§ 87(2)(b) identified PO Thorn by name as the officer who questioned him, frisked him and searched him. In his interview with the CCRB, PO Thorn confirmed that this was the case.

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]

Investigative Findings and Recommendations

Allegations Not Pled

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]

Allegation A: PO Aaron Thorn questioned § 87(2)(b)

It is undisputed that PO Thorn questioned § 87(2)(b) § 87(2)(g)

According to Kamins' *New York Search and Seizure*, when police receive communications "furnishing a general description of a suspect and location ... the police have the right to conduct a common-law inquiry when the defendant fits the description. Many descriptions that are received by the police are frequently incorrect or imprecise, but close enough to justify an inquiry"(2.03[1]) (encl. 2B)

Neither PO Thorn nor Sgt. Miller could recall the description of the armed robber and PO Thorn's statements on the Arrest Report and Complaint Report make no mention of § 87(2)(b) matching any description.

Furthermore, there was no SPRINT of the robbery and no UF-61 filed out regarding the alleged robbery. Neither officer made mention of the reported robbery in their memobooks and

the Command Log (encl. 19A-H) made no mention of any civilian arriving at the 32nd Precinct to file a report. The investigation was thus unable to determine the description of the robber.

§ 87(2)(g)

However, Kamins' *Search and Seizure* does go on to say that, "Courts will also justify a right to inquire when the police are in a high crime area and they observe conduct that, while not necessarily indicative of criminality, is suspicious because of the surrounding area." (2.03[1])

§ 87(2)(g)

§ 87(2)(g)

Allegation B: PO Aaron Thorn frisked § 87(2)(b)

It is undisputed that § 87(2)(b) was frisked while walking on stairs at St. Nicholas Park. § 87(2)(g)

In order to frisk a person, an officer must have reasonable suspicion that the person is armed. People v. DeBour, 40 N.Y.2d 210 (1976) (encl. 0(1)A-L). Mere presence in a high crime area cannot constitute a basis for a frisk, but must be accompanied by some specific observations leading the officer to believe that an individual is armed. See People v. Powell, 246 A.D.2d 366 (1998) (encl. 0(2)A-D); See also People v. Stevenson, 273 A.D.2d 826 (2000) (encl. 0(3)A-B).

Here, PO Thorn cites two factors justifying his frisk of § 87(2)(b). First, he relies on the earlier report of a robbery inside St. Nicholas Park. § 87(2)(g)

PO Thorn also cites § 87(2)(b) allegedly evasive answers as an additional factor in his decision to frisk him. However, PO Thorn did not recall what those questions were and did not recall what questions he asked to prompt them. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C: PO Aaron Thorn searched § 87(2)(b)

It is undisputed that PO Thorn searched § 87(2)(b) § 87(2)(g)

According to Kamins' *Search and Seizure*, "A police officer conducting a ... frisk has the right to seize a weapon he feels through a person's clothes." (4.01[2][b]) (encl. 2C)

With regard to the search, § 87(2)(b) stated that PO Thorn removed his i-pod from a pocket on the shoulder of his jacket after frisking the area, shook his jacket such that a juice box

fell out, and then frisked both of his rear pants pockets, searched both of them, and extracted a switchblade from one of them.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D: An officer used force against § 87(2)(b)

§ 87(2)(b) claimed that, while in the Station House, an unidentified officer punched his head three times and that, each time, his head struck a fuse box as a result of the force. § 87(2)(b) was, as a result, bleeding from his forehead.

In contrast, PO Thorn stated that he was with § 87(2)(b) for the entire processing of his arrest and stated that nothing unusual took place. Moreover, PO Thorn denied seeing any officer use any physical force against § 87(2)(b). Sgt. Miller also stated that he encountered nothing unusual in processing § 87(2)(b) arrest, and that § 87(2)(b) was calm and compliant during the process.

§ 87(2)(g) Sgt. Thorney, who was the desk officer when § 87(2)(b) was processed, stated that he did not see any officer use any force against any individual in the Station House that evening. Sgt. Thorney did not recall any unusual events from the evening in question.

§ 87(2)(g)

- The Arrest Photograph showed no blood or other injury on § 87(2)(b) face.
- The Pre-Arrest Screening form did not demonstrate that § 87(2)(b) had recently been injured.

- § 87(2)(g)

- § 87(2)(g)

§ 87(2)(g)

Team: _____

:

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date